

**EXHIBIT G**

**(Transcript of Hearing)**

Transcript of Hearing Before Judge Hayden re writ of attachment (2).txt

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3 CIVIL NO. 05-01863  
4 FUJI PHOTO FILM CO. LTD., :  
5 Plaintiff, :  
6 -vs- :  
7 JACK C. BENUN, RIBI TECH PRODUCTS, :  
8 Et al :  
9 :  
10 : MOTIONS  
11 Defendant :  
12 ----- :  
13 Newark, New Jersey :  
14 November 15, 2005 10 a.m. & 3 p.m.  
15 B E F O R E :  
16 THE HONORABLE KATHARINE S. HAYDEN, U.S.D.J.  
17  
18 A p p e a r a n c e s :  
19 STROOCK & STROOCK & LAVAN LLP  
20 Attorneys for Plaintiff-FUJI PHOTO  
21 180 Maiden Lane  
22 New York, New York 10038-4982  
23 BY: LAWRENCE ROSENTHAL, ESQ.  
24 MATTHEW SIEGAL, ESQ.  
25  
26 FOX AND FOX LLP  
27 Attorneys for Plaintiff  
28 70 South Orange Avenue Suite 203  
29 Livingston, New Jersey 07039  
30 BY: ROBERT J. ROHRBERGER, ESQ.  
31  
32 BECKER MEISEL LLC  
33 Attorneys for Defendant-Polytech  
34 The Galleria  
35 2 Bridge Avenue, Building 1  
36 Second Floor  
37 Red Bank, New Jersey 07701  
38 BY: DANIEL J. O'HERN, ESQ.  
39 STACY B. KRIEGER, ESQ.

Pursuant to Section 753 Title 28 United States Code,  
23 the following transcript is certified to be an accurate  
record as taken stenographically in the above-entitled  
24 proceedings.

25 Ralph F. Florio  
Official Court Reporter

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1           THE COURT: Good afternoon. I appreciate counsel's  
2 argument. I think it should be obvious from the questions  
3 that I have asked, the opportunity to expound on the record,  
4 that I have been very happy to extend to counsel and to Mr.  
5 Benun, the times off the bench that you've patiently sat  
6 through when I assure you that I have not been reading  
7 mystery novels or otherwise doing my nails, but thinking  
8 seriously about these issues. I will rule on the application  
9 for these reasons.

10           By way of background. Fuji holds various patents  
11 for lens-fitted film packages (LFFPs), commonly known as  
12 disposable cameras and has brought suit against these  
13 defendants Mr. Benun, Ribit Tech products, Poloytech  
14 Enterprise Limited and Poloytech Shenzhen Camera Company  
15 Limited, for patent infringement. And against Mr. Benun,  
16 Poloytech Camera Company Limited, Poloytech China, otherwise  
17 known, as Poloytech Hong Kong, for infringement inducement.

18           Poloytech China and Poloytech Hong Kong currently  
19 refurbished and sell alleging infringing LFFP to defendant  
20 Ribit Tech. In the complaint that's before this court, Fuji  
21 alleges that Poloytech violated 35 U.S.C. Section 271, direct  
22 patent infringement, and 271(b) inducement to infringe  
23 patents.

24           Now prior to this proceeding we're aware that Fuji  
25 prevailed in a patent infringement inducement lawsuit against

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1 Benun, Jazz Photo, otherwise known as Jazz U.S. and its  
2 subsidiary Jazz Photo Hong Kong, otherwise known as Jazz Hong  
3 Kong. Let me correct the record. When I say, when I say  
4 otherwise known as, I don't mean they are using a/k/a, I'm  
5 simply referring to them in their common denominations as  
6 they may be referring to them later on. That decision  
7 appears at 249 F.Supp. 2d 434, District of New Jersey 2003.  
8 Jazz US and Jazz Hong Kong were formed by Benun in 1995.  
9 Jazz Hong Kong purchased the infringement LFFP from Poloytech  
10 and sold them to Jazz U.S. FOB Hong Kong. Jazz U.S. imported  
11 the infringing goods into the United States. In that case  
12 Fuji was awarded a total of \$21,898,051.84, against all the  
13 defendants jointly and severly. And \$1,021,031.76 against  
14 defendants Jazz U.S. and Jazz Hong Kong jointly and severly.

15 The defendants moved for a stay of judgment. This  
16 district denied that application. Defendants then moved for  
17 a stay in the federal circuit. That was denied. Defendants  
18 appealed the decision of the court and the federal circuit  
19 affirmed. See Fuji Photo Film v Jazz Photo Corp. 394 F.3d  
20 1368, decided January 14, 2005.

21 Fuji has received less than \$500,000 for the  
22 judgment. The proceeds of which were derived from an appeal  
23 bond posted by Jazz because Benun filed for bankruptcy under  
24 Chapter 7, Jazz U.S. filed for bankruptcy under Chapter 11,  
25 and Jazz Hong Kong was rendered insolvent and disbanded.

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1 Ribi Tech, one of the defendants in the current case, bought  
2 Jazz U.S. assets from the bankruptcy estate. Fuji alleges  
3 that Ribi Tech continues to import the infringing LFFPs  
4 manufactured by Poloytech into the United States.

5           The bankruptcy of Jazz Photo Corp., is pending in  
6 the bankruptcy court under 03-BR-26565 here in this  
7 district. The liquidating trustee intends to make immediate  
8 payment of \$1.850 million to Poloytech Hong Kong in  
9 settlement of administrative claims asserted by Polytech Hong  
10 Kong against Jazz. And may make future payments against  
11 Poloytech Hong Kong's pro rata share of a prepetition claim  
12 in the amount of \$1.427,240.84, as funds become available to  
13 satisfy.

14           Fuji is asking this Court to issue a writ of  
15 Attachment against these assets up to the sum of \$3.5 million  
16 to be held in an interest-bearing account by the liquidating  
17 trustee, pending the outcome of this litigation.

18           The legal basis for a Writ of Attachment in the  
19 district court, is stated in the Federal Rules of Civil  
20 Procedure 64 as follows. "At the commencement of and during  
21 the course of an action all remedies providing for seizure of  
22 property for the purpose of securing satisfaction of the  
23 judgment ultimately entered in the action are available under  
24 circumstances and in a manner provided by the law of the  
25 state in which the district court is held." And these

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1 remedies include attachment. Federal Rule of Civil Procedure  
2 64.

3 Now, the manner provided by the applicable New  
4 Jersey statute appears in N.J.S.A. 2A:26-2 and New Jersey  
5 Rule 4:60-5(a). 2A:26-2 states in pertinent part. "An  
6 attachment may issue out of the Superior Court upon the  
7 application of any resident or non resident plaintiff against  
8 the property real and personal, of any defendant in any of  
9 the following instances." And then I'm moving to subparagraph  
10 B. "Where the defendant absconds or is a non resident of this  
11 state, and a summons cannot be served on him in this state."

12 The rule of N.J. Rule 4:60-5(a) states in pertinent  
13 part "A writ of attachment shall issue upon court order on  
14 the plaintiff's motion. The motion shall be granted only  
15 upon the court's finding based on the moving papers, any  
16 imposing affidavits which may be filed and any testimony  
17 taken pursuant to 1:6-6, that (1) there is probability that  
18 final judgment will be rendered in favor of the plaintiff;  
19 (2) there are statutory grounds for issuance of a writ; and  
20 (3), there is real or personal property of the defendant at a  
21 specific location within this state which is subject to  
22 attachment."

23 So as to the first element, the three elements I've  
24 read. The first element is "That there's a probability that  
25 final judgment will be rendered in favor of plaintiff." The

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1 Court finds that there is a probability and the final  
2 judgment will be rendered in favor of the  
3 plaintiff. "Probable is used in the ordinary sense of the  
4 word. In other words, a result is probable if it "can  
5 reasonably and fairly, convincingly be accepted as true,  
6 factual or possible, without being undeniably so." That's a  
7 quote from Sentry Insurance v Sky Management Inc. 34  
8 F.Supp.2d 900, 905, (D.N.J. 1999).

9 This Court finds it probable that a final judgment  
10 can be rendered in favor of the plaintiff for the following  
11 reasons.

12 First. The ALJ rulings that we have talked about  
13 substantially in the course of these proceedings. Those  
14 rulings found that over 83 percent of the disposable cameras  
15 refurbished by Poloytech and sold to Jazz during the years  
16 2003 to 2005 infringed on Fuji's patents. While the ALJ  
17 ruling is not binding on this Court and the Court recognizes  
18 this, it is still persuasive of that standard of probability  
19 of success in this.

20 Second. Since Jazz is unable to show "permissible  
21 repair" with regard to the majority of the cameras it  
22 purchased from Poloytech. It is likely that Poloytech will  
23 similarly be unable to show permissible repair with regard to  
24 the cameras it sold to Jazz and to Ribit Tech.

25 Poloytech argues that because they don't make, use

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1 sell, import or offer refurbished LFFPs for sale in the U.S.,

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2 a case for patent infringement does not lie. However, the  
3 federal circuit has found on numerous occasions that direct  
4 sale into the United States is not necessarily a dispositive  
5 factor. In Beverly Hills Fan Company v Royal Sovereign Corp.  
6 21 F.3d 1558, a decision of the Federal Circuit of 1994, the  
7 court found that the infringing fans were on sale in the U.S.  
8 for the purposeful activity of the defendant Ultec which was  
9 incorporated in China and which manufactured the fans in  
10 Taiwan even though Ultec did not directly sell into the  
11 United States.

12 Poloytech states that Fuji has not sufficiently  
13 alleged inducement of patent infringement because there's no  
14 showing of intent. To show inducement Fuji must show direct  
15 patent infringement plus the alleged infringer must have  
16 knowingly induced the infringement and must have possessed  
17 specific intent to encourage another's infringement.

18 In MEMC Electronic v Materials Inc., 420 F.3d 1369,  
19 Federal Circuit 2005, the court held that circumstantial  
20 proof of intent is enough to make the intent element of an  
21 inducement claim. And knowledge of the potentially  
22 infringing activities of its U.S. customer can support a  
23 finding of knowledge, sufficient to meet the standards that  
24 we're discussing now.

25 Based upon the relationship between the players

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1 here there is sufficient circumstantial proof of intent,  
2 along with a sufficiently strong inference of knowledge and  
3 on the part of Poloytech as to potentially infringing  
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4 activities of both Jazz U.S. and Ribic Tech, to meet the  
5 probability standard, therefore, the Court does find that  
6 there is a probability that Poloytech will be found to induce  
7 infringement.

8 As to the second element. There are statutory  
9 grounds for issuance of the writ. As my discussion earlier  
10 in this oral opinion regarding the statute 2A:26-2 and New  
11 Jersey Rule 4:60-5(a) demonstrates.

12 As to the third element. There is real or personal  
13 property of the defendant at the specific location within  
14 this state that is subject to attachment. Claims of  
15 Poloytech against Jazz Photo are a property of Poloytech  
16 within this state. These claims are subject to attachment  
17 because Jazz, the party owing the debt, holding the property  
18 of Poloytech, may be served with process in New Jersey.  
19 Poloytech claims that Fuji consented to the payment of those  
20 particular administratively claims or the compromised amount  
21 decided because Fuji failed to have objected to that  
22 settlement claim in the bankruptcy court. But whether or not  
23 that's true, it is irrelevant to the issue of whether or not  
24 Poloytech property exists within the state.

25 As to elements of inequitable injunction such as

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1 the one requested here, the Court has found that there is a  
2 reasonable likelihood of success on the merits as previously  
3 discussed.

4 The Court also finds that Fuji may be subject to

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5 irreparable harm if the injunction is not granted. Although  
6 the Court is well aware of an inability to collect money  
7 damages is generally not enough to constitute irreputable  
8 harm, this can constitute irreparable harm under certain  
9 circumstances. See Hoxworth v Blinder, Robinson & Company  
10 Inc. 903 F.2d 186, 206 Third Circuit 1990. In this case,  
11 were there are allegations that at least one of the  
12 defendants is doing his best to frustrate the collection of  
13 any judgments on the merits, where there are allegations that  
14 assets have been transferred out of the jurisdiction in order  
15 to frustrate plaintiff's judgments, and where Poloytech, by  
16 its own admission is teetering on the brink of at least  
17 instability if not insolvency, and where the issues involved  
18 present complex questions on a complicated procedural  
19 landscape, this Court holds that the irreparable harm  
20 standard is met. Recognizing that there have been many years  
21 of litigation between and among the parties in many forums.  
22 And when we first met and the Court issued the first  
23 injunctive ruling, I observed that in all of the forums,  
24 while considerable work has been done on the factual  
25 allegations and on the patent claims, there appears to be a

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1 need for some activity and action with respect to the  
2 findings and the remedies, it would appear that the  
3 injunctive relief sought here is in substantial aid to  
4 remedies. And I believe under all of the circumstances that  
5 Fuji has demonstrated in numerous ways that the time for  
6 remedies is at hand.

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7           Finally, there is an argument that the equitable  
8 balance of hardships would favor Poloytech. I do not find it  
9 persuasive insofar as Poloytech argues that Fuji's size and  
10 comparison to it automatically favors Poloytech.

11           For all of the above reasons the application for  
12 writ of Attachment is granted. Now I am aware that a Writ of  
13 Attachment was presented to the Court, directed to the United  
14 States Marshal. I don't know whether or not the defendants  
15 have had a chance to review it. I am prepared to sign it.  
16 If there are any fundamental, egregious, procedural technical  
17 errors in it, now is the time to be heard on it.

18           MS. GOLDSTEIN: Your Honor--

19           THE COURT: I haven't forgotten about Agfa.

20           MS. GOLDSTEIN: Thank you.

21           THE COURT: Now, Agfa has presented legal arguments  
22 going against the relief that I've just granted. The monies  
23 that will be attached are not going anywhere. They are  
24 here. I am going to direct Agfa to make a motion, to specify  
25 exactly the relief, the relief that it is seeking based upon

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1 this ruling, and directing Fuji to answer specifically based  
2 upon the rulings. There is just a little bit of a gray area  
3 in terms of not so much what Agfa is seeking, the motion is  
4 pretty much going to say what you've already said and put it  
5 into motion form. But I don't have the clarity in terms of  
6 what Fuji's position is. And I want to have its position  
7 laid out clearly, supported by case law, so that I'm able to

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8 make a ruling.

9 Everybody thank you very much.

10 MS. GOLDSTEIN: Thank you.

11 MR. SIEGAL: Thank you, your Honor.

12 THE COURT: Thank you.

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